



BUSINESS WEEKLY

WERDIGER EDITION

Restoring the primacy of Choshen Mishpat

Issue #403 | Pesach | Friday, March 30, 2018 | 14 Nissan 5778

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

STORAGE SALE!

Mr. Cohen and Mr. Mann owned a large storage complex, C&M Storage. This past year, they had inaugurated a freezer warehouse; major food manufacturers and distributors became clients of their storage space. In the freezer sat a wide range of frozen food, including *chametz*.

As Pesach approached, Mr. Cohen wondered what to do about the *chametz* in the freezer warehouse. He planned to sell his *chametz*, as he did every year, but had no control over his clients. Some of the clients who had stored *chametz* were Jewish, and some were not.

"What should we do about the *chametz* sitting in the freezer?" Mr. Cohen asked Mr. Mann. "I suppose nothing," Mr. Mann shrugged his shoulder. "It's not our *chametz*; it's not our problem."

"But the *chametz* is on our property," Mr. Cohen pointed out.

"So what?" replied Mr. Mann. "If a non-Jew walks into my house with his *chametz*, that's not a problem!"

"What about the Jewish clients?" asked Mr. Cohen. "That's a problem; they're keeping their *chametz* in our warehouse!"

"I hope they sell their *chametz*," replied Mr. Mann. "If not — it's their issue, not ours. Anyway, you always include the C&M Storage facilities in your *mechiras chametz* form, so the warehouses are rented out; they're not even our property for Pesach."

"What you're saying makes sense," said Mr. Cohen. "I have to go to Rabbi Dayan this week for *mechiras chametz*, though. I've discussed with him a number of issues relating to the business, so I'll ask him this, too."

When Mr. Cohen came to sell his *chametz*, he told Rabbi Dayan: "I have a new twist this year. Food manufacturers are storing *chametz* in the new freezer warehouse. Does that pose any issue? Can I include that *chametz* in my sale?"

"A Jew who is responsible as a guardian of *chametz*, whether of a fellow Jew or a non-Jew, violates the prohibition of possessing *chametz* (*bal yeira'eh ubal yematzei*)," replied Rabbi Dayan. "Some say only a paid guardian (*shomer sachar*), while others say even an unpaid guardian (*shomer chinam*) is violating it. Since you rent out the storage space and are liable for the contents, you are a *shomer sachar*, and must certainly dispose of this *chametz* or sell it! Otherwise it

DID YOU KNOW?

That some lending institutions and banks are Jewish-owned and one may not take a loan from them without a Heter Iska?



BHI HOTLINE

WRITING A KESUBAH ON CHOL HAMOED

On Chol Hamoed I realized that my wife's *kesubah* was lost.

Q: Is it permitted to write a *kesubah d'irkasa* on Chol

Hamoed, or is that included in the prohibition against writing on Chol Hamoed?

A: When a couple marries, the husband obligates himself in certain financial responsibilities to his wife, and those obligations are recorded in the *kesubah*. The primary obligation is the obligation that the husband will pay whether he divorces his wife or she becomes widowed.

It is prohibited for a couple to remain together without a *kesubah* (see E.H. 66:1). If their *kesubah* becomes lost or destroyed, it must be replaced immediately (E.H. 66:3). The replacement *kesubah* for one that was lost is called a *kesubah d'irkasa*.

The reason a couple may not remain without a *kesubah* is so that the husband should not take advantage of the situation and divorce his wife without any financial obligation. Furthermore, even if he would deposit money or other valuables in her or her designee's possession to cover the value of the *kesubah*, they may not remain without the actual *kesubah* so that the husband should not get angry and simply divorce her and declare, "Take your *kesubah* and get out."

However, when it is not possible to write a *kesubah d'irkasa*, for example on Shabbos, under certain conditions he may give her objects equal to the value of the *kesubah* and they may remain together until they can write a *kesubah d'irkasa* immediately after Shabbos (E.H. 66:2). Generally, giving movable objects should not be considered a replacement for writing a *kesubah d'irkasa* and is an option only when there is no alternative.

Writing is prohibited on Chol Hamoed. Professional writing such as calligraphy or *ksav ashuris* is permitted only when there is a



STORY LINE

becomes prohibited, as other *chametz she'avar alav haPesach*" (O.C. 440:1, 4).

"How can I sell what is not mine, though?" asked Mr. Cohen.

"The *Gemara* (B.M. 38a; *Pesachim* 13a) teaches that the guardian of produce that is spoiling rapidly should sell it before it becomes a total loss, based on *hashavas aveidah*," explained Rabbi Dayan. "This is part of his responsibility as a guardian. The same is true for *chametz*, so that it should not become prohibited" (C.M. 292:17; *Pischei Teshuvah* 292:8; O.C. 443:2; *Mishnah Berurah* 443:11; *Pischei Choshen, Pikadon* 2:34).

"What about *chametz* of a non-Jew?" asked Mr. Cohen. "He has no issue with Pesach; it's only my issue, because I am responsible as a guardian."

"Indeed, *Pri Megadim* cites *Shaagas Aryeh* (#73) that you cannot sell *chametz* of a non-Jew for which you accepted responsibility," answered Rabbi Dayan. "However, others disagree and maintain that you can sell it" (*Eishel Avraham* 441:4; *Taz*, O.C. 440:1; *Mishnah Berurah* 440:4).

"How does that work?" asked Mr. Cohen.

"*Shulchan Aruch Harav* (O.C. 440:16) explains that disposing of a non-Jew's property with intention to pay him is not considered theft, especially if it was handed to you willingly," answered Rabbi Dayan. "Harav Moshe Sternbuch further suggests that since the Torah holds you responsible for the non-Jew's *chametz* in this case, it is included in your *mitzvah* of *tashbisu* (ridding oneself of *chametz*). Thus, the Jew is allowed to destroy or sell it. This is especially true according to the practice of many Rabbanim to sell the *chametz* in the fifth hour, when there is already a requirement of *tashbisu*" (*Moadim Uzmanim* 4:271).



MONEY MATTERS

GIFTS #13

Chipping In for a Cake on Pesach

(Based on writings of Harav Chaim Kohn, shlita)

Q: My non-Jewish coworkers are planning to buy a birthday cake for the boss on Pesach. Am I allowed to chip in? Can I have my name included on the birthday card?

A: A Jew may not have a partnership in *chametz* with a non-Jew on Pesach (*Mishnah Berurah* 448:2).

Nonetheless, a person does not acquire against his will. Thus, *Magen Ha'elef* (O.C. 448:4) states that if a Jew and non-Jew have a partnership and the non-Jew buys *chametz* with the joint money on Pesach, since the Jew does not want to acquire the *chametz*, it does not become prohibited (*Pischei Choshen, Kinyanim* 1:[21,24]; *Shutfim* 10:35).

Thus, you can chip in, but should intend that you do not want to acquire even partial ownership of the cake. It is preferable to clarify this point to the one collecting the money, to avoid any mistaken impression (*mar'is ayin*).

It seems permissible to have your name added to the birthday card, even if it is attached to the cake. Furthermore, after Pesach, you may partake of the cake.



BHI HOTLINE

potential financial loss or for public needs. Non-professional writing is permitted for any *moed* need.

Rema presents two opinions as to whether it is permitted to write a *kesubah* on Chol Hamoed (O.C. 545:5). Historically, numerous conditions were added into the *kesubah*; therefore, replacing a missing *kesubah* was considered a *davar haavud* (a potential loss) out of concern that it could lead to a disagreement about those conditions. Accordingly, in our times when the text of the *kesubah* is standard, even according to the lenient opinion presented by the Rema, replacing a missing *kesubah* is not categorized as a *davar haavud* (*Magen Avraham* 18).

Therefore, according to some opinions, a *kesubah d'irkasa* should not be written on Chol Hamoed and the husband should give his wife items worth the value of the *kesubah*, since Chol Hamoed is also considered a pressing circumstance since the *kesubah* cannot be written (*Machatzis Hashekel*).

Others contend that since it is preferable (*l'chat'chilah*) to write a *kesubah* rather than rely on giving the wife objects, one should write a *kesubah d'irkasa* on Chol Hamoed. Moreover, since our writing is considered non-professional writing, it is permitted to use that script for something that is needed for the *moed* (*Mishnah Berurah* 28 in the name of *Pri Megadim*; *Shevet HaLevi* 8:125, and see *Shevivei Eish* 34).

As a practical matter, one may follow the lenient opinion and write a *kesubah d'irkasa* on Chol Hamoed using our standard script. There is a debate whether printing text with a printer is considered professional writing or not (see *Piskei Teshuvos* 545:2). When possible, one should obtain a preprinted version that leaves blanks for the personal information of the specific couple. If one is not available, the entire text may be written by hand, taking caution to properly space the letters and words.

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